

Exhibit C-1

CAUSE NO. 1-18-1649 _____

ROCKWALL HIGHGATE, LTD.,	§	IN THE DISTRICT COURT
	§	
Plaintiff	§	Rockwall County - 439th District Court
	§	
v.	§	
	§	_____ JUDICIAL DISTRICT
INDEMNITY INSURANCE COMPANY	§	
OF NORTH AMERICA A/K/A CHUBB	§	
AGRIBUSINESS,	§	
	§	
Defendant.	§	ROCKWALL COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION
 AND REQUESTS FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff ROCKWALL HIGHGATE, LTD. (“Plaintiff” or “RH”), and files this its Original Petition complaining of Defendant INDEMNITY INSURANCE COMPANY OF NORTH AMERICA A/K/A CHUBB AGRIBUSINESS (“Defendant”) and would show unto the Court the following:

I.

DISCOVERY CONTROL PLAN

1. Discovery in this proceeding is intended to be conducted under Discovery Control Plan Level 2, as set forth in Rule 190.3 of the Texas Rules of Civil Procedure.

II.

PARTIES

2. Plaintiff is a Texas limited partnership.

3. Defendant may be served with process by serving the Commissioner of Insurance, at P.O. Box 149104, Austin, Texas 78714-9104.

III.

VENUE, JURISDICTION & RULE 47 STATEMENT

4. Pursuant to TEX. CIV. PRAC. & REM. CODE Sections 15.002 and 15.032, venue is proper in Rockwall County, because the subject property is situated in Rockwall County, and Rockwall County is the county in which all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred.

5. This Court has subject matter jurisdiction, and the damages sought are within the jurisdictional limits of this Court.

6. Subject to the right to amend, pursuant to Texas Rule of Civil Procedure 47, Plaintiff seeks the following type of relief: "monetary relief over \$200,000 but not more than \$1,000,000."

IV.

FACTS

7. Some of the following factual assertions made in this petition are made upon information and belief.

8. Plaintiff owns a house located at or near 5565 FM 549, Rockwall, Rockwall County, Texas 75032 (the "Property").

9. Plaintiff filed a claim with Defendant, after the Property suffered substantial water damage. Defendant denied the insurance claim and has failed to pay the claim.

V.

BREACH OF CONTRACT

10. All of the foregoing and below paragraphs are incorporated as if fully set forth herein verbatim.

11. Defendant issued an insurance policy to Plaintiff.

12. Defendant failed to pay Plaintiff's claim and therefore breached the agreement.

13. Such breaches caused injury and damages to Plaintiff.

14. Causes of action are pleaded herein alternatively, as permitted by the Texas Rules of Civil Procedure. The damages sought are within the jurisdictional limits of this Court. Plaintiff seeks all actual, consequential and incidental damages as permitted by law.

VI.

ATTORNEY FEES

15. All of the foregoing and below paragraphs are incorporated as if fully set forth herein verbatim.

16. It has been necessary for Plaintiff to use the undersigned counsel to prosecute this action. Pursuant to Tex. Civ. Prac. & Rem. Code §38.001 *et seq.* and/or Tex. Bus. & Com. Code §17.41 *et seq.*, Plaintiff is entitled to an award of reasonable attorneys' fees and costs incurred in connection with this action. Plaintiff would be entitled to an additional award of reasonable attorneys' fees in the event of an appeal to the Court of Appeals and an additional award of reasonable attorneys' fees in the event of a further appeal to the Supreme Court of Texas.

VII.

CONDITIONS PRECEDENT

17. Any and all conditions precedent to the liability of Defendant to Plaintiff under any cause of action pleaded herein have occurred or been performed or have been excused or waived.

VIII.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that:

- a. Defendant be cited to appear and answer;
- b. Plaintiff be granted judgment for all actual, consequential and incidental damages;
- c. Plaintiff be granted judgment for prejudgment and post-judgment interest at the highest legal or contractual rate allowed by law;
- d. Plaintiff be granted judgment for reasonable attorneys' fees, with additional contingent amounts in the event of appellate proceedings;
- e. Plaintiff be granted judgment for all costs of court; and
- f. Plaintiff be granted all other and further relief to which Plaintiff may be entitled.

DATED: December 14, 2018

Respectfully submitted,

LAW FIRM OF SCOTT ORTIZ, P.C.

By: /s/ M. Scott Ortiz
M. Scott Ortiz
State Bar No. 24032806

1012 Ridge Road
Rockwall, Texas 75087
Telephone: (972) 772-2800

Facsimile: (972) 772-7780
Email: scott@scottortizlaw.com

ATTORNEY FOR PLAINTIFF

Exhibit C-2

STYLED: **ROCKWALL HIGHGATE, LTD., v. INDEMNITY INSURANCE COMPANY OF NORTH AMERICA A/K/A CHUBB****AGRIBUSINESS**

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:	
Name:	Email:	Plaintiff(s)/Petitioner(s): Rockwall Highgate, Ltd.		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
Address:	Telephone:	Defendant(s)/Respondent(s): Indemnity Insurance Company of North America a/k/a Chubb Agribusiness		Additional Parties in Child Support Case:	
1012 Ridge Road	(972) 772-2800	[Attach additional page as necessary to list all parties]		Custodial Parent:	
City/State/Zip:	Fax:			Non-Custodial Parent:	
Rockwall, TX 75087	(972) 772-7780			Presumed Father:	
Signature:	State Bar No:				
/s/ M. Scott Ortiz	24032806				
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)	
<i>Debt/Contract</i> <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <i>Foreclosure</i> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input checked="" type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <i>Malpractice</i> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: Motor Vehicle Accident <input type="checkbox"/> Premises <i>Product Liability</i> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <i>Divorce</i> <input type="checkbox"/> With Children <input type="checkbox"/> No Children	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order	
Employment	Other Civil		Other Family Law	Parent-Child Relationship	
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property		<input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
Tax	Probate & Mental Health				
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<i>Probate/Wills/Intestate Administration</i> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____				
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input checked="" type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					

Exhibit C-3

CIVIL CITATION

THE STATE OF TEXAS

439th District Court

Cause No. 1-18-1649

THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued." You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

TO:

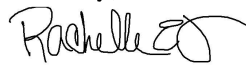
INDEMNITY INSURANCE COMPANY OF NORTH AMERICAN A/K/A CHUBB
AGRIBUSINESS
C/O COMMISSIONER OF INSURANCE
PO BOX 149104
AUSTIN TX 78714

You are hereby commanded to appear before the 439th District Court of Rockwall, Texas in Rockwall, Texas, at the Rockwall County Courthouse, 1111 E. Yellowjacket Lane, Suite 200, in Rockwall, Texas by filing a written answer to Plaintiff's ORIGINAL PETITION at or before 10:00 A.M. of the Monday next after the expiration of 20 days after the date of service hereof, a copy of which accompanies this citation, in cause number 1-18-1649, styled ROCKWALL HIGHGATE, LTD Vs INDEMNITY INSURANCE COMPANY OF NORTH AMERICAN A/K/A CHUBB AGRIBUSINESS.

Said Petition was filed in the 439th District Court on DECEMBER 17, 2018 by SCOTT ORTIZ Attorney for Plaintiff, whose address is 1012 RIDGE ROAD ROCKWALL TX 75087, 972-772-2800.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of Court at office on this the 18th day of December, 2018

Lea Carlson, District Clerk
Rockwall County, Texas

By: , Deputy
Rachelle Cherry

Court Return



CIVIL CITATION
THE STATE OF TEXAS

439th District Court

Cause No. 1-18-1649

THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued.". You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

TO:


INDEMNITY INSURANCE COMPANY OF NORTH AMERICAN A/K/A CHUBB
AGRIBUSINESS
C/O COMMISSIONER OF INSURANCE
PO BOX 149104
AUSTIN TX 78714

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ISSUED AND GIVEN UNDER MY HAND AND SEAL of Court at office this on this the 18th day of December, 2018

Lea Carlson, District Clerk
Rockwall County, Texas

By: , Deputy
Rachelle Cherry

Defendant copy



CIVIL CITATION

THE STATE OF TEXAS

439th District Court

Cause No. 1-18-1649

THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued.". You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

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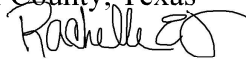
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AGRIBUSINESS
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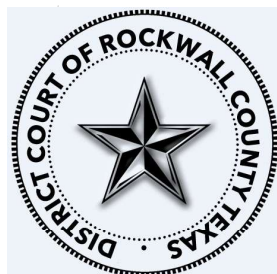
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ISSUED AND GIVEN UNDER MY HAND AND SEAL of Court at office this on this the 18th day of December, 2018

Lea Carlson, District Clerk
Rockwall County, Texas

By: , Deputy
Rachelle Cherry

File Copy



RETURN OF SERVICE

Cause No. : 1-18-1649 439th District Court

ROCKWALL HIGHGATE, LTD Vs INDEMNITY INSURANCE COMPANY OF NORTH AMERICAN A/K/A CHUBB AGRIBUSINESS

Executed when copy is delivered:

This is a true copy of the original citation, was delivered to defendant _____, on the _____ day of _____, 20_____.

_____, Officer
_____, County, Texas

By: _____, Deputy

ADDRESS FOR SERVICE:

INDEMNITY INSURANCE COMPANY OF NORTH AMERICAN A/K/A CHUBB AGRIBUSINESS
C/O COMMISSIONER OF INSURANCE PO BOX 149104
AUSTIN TX 78714

OFFICER'S RETURN

Came to hand on the _____ day of _____, 20_____, at _____, o'clock _____.m., and executed in _____ County, Texas by delivering to each of the within named defendants in person, a true copy of this Citation with the date of delivery endorsed thereon, together with the accompanying copy of the ORIGINAL PETITION at the following times and places, to-wit:

Name	Date/Time	Place, Course and Distance from Courthouse
_____	_____	_____

And not executed as to the defendant(s), _____

The diligence used in finding said defendant(s) being: _____

And the cause or failure to execute this process is: _____

And the information received as to the whereabouts of said defendant(s) being: _____

FEES:

Serving Petition and Copy \$ _____

Total: \$ _____

_____, Officer
_____, County, Texas

By: _____, Deputy

Affiant

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The signature is not required to be verified. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return shall be signed under penalty or perjury and contain the following statement.

"My name is _____, my date of birth is _____, and my address is _____
(First, Middle, Last)

(Street, City, Zip)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.

Executed in _____ County, State of _____, on the _____ day of _____.

Declarant/Authorized Process Server

(Id # & expiration of certification)

RETURN OF SERVICE

Cause No. : 1-18-1649 439th District Court

ROCKWALL HIGHGATE, LTD Vs INDEMNITY INSURANCE COMPANY OF NORTH AMERICAN A/K/A CHUBB AGRIBUSINESS

Executed when copy is delivered:

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_____, Officer
_____, County, Texas

By: _____, Deputy

ADDRESS FOR SERVICE:

INDEMNITY INSURANCE COMPANY OF NORTH AMERICAN A/K/A CHUBB AGRIBUSINESS
C/O COMMISSIONER OF INSURANCE PO BOX 149104
AUSTIN TX 78714

OFFICER'S RETURN

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_____	_____	_____

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The diligence used in finding said defendant(s) being: _____

And the cause or failure to execute this process is: _____

And the information received as to the whereabouts of said defendant(s) being: _____

FEES:

Serving Petition and Copy \$ _____

Total: \$ _____

_____, Officer
_____, County, Texas

By: _____, Deputy

Affiant

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Executed in _____ County, State of _____, on the _____ day of _____.

Declarant/Authorized Process Server

(Id # & expiration of certification)

RETURN OF SERVICE

Cause No. : 1-18-1649 439th District Court

ROCKWALL HIGHGATE, LTD Vs INDEMNITY INSURANCE COMPANY OF NORTH AMERICAN A/K/A CHUBB AGRIBUSINESS

Executed when copy is delivered:

This is a true copy of the original citation, was delivered to defendant _____, on the _____ day of _____, 20_____.

_____, Officer
_____, County, Texas

By: _____, Deputy

ADDRESS FOR SERVICE:

INDEMNITY INSURANCE COMPANY OF NORTH AMERICAN A/K/A CHUBB AGRIBUSINESS
C/O COMMISSIONER OF INSURANCE PO BOX 149104
AUSTIN TX 78714

OFFICER'S RETURN

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Name	Date/Time	Place, Course and Distance from Courthouse
_____	_____	_____

And not executed as to the defendant(s), _____

The diligence used in finding said defendant(s) being: _____

And the cause or failure to execute this process is: _____

And the information received as to the whereabouts of said defendant(s) being: _____

FEES:

Serving Petition and Copy \$ _____

Total: \$ _____

_____, Officer
_____, County, Texas

By: _____, Deputy

Affiant

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The signature is not required to be verified. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return shall be signed under penalty or perjury and contain the following statement.

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(First, Middle, Last)

(Street, City, Zip)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.

Executed in _____ County, State of _____, on the _____ day of _____.

Declarant/Authorized Process Server

(Id # & expiration of certification)

Exhibit C-4

ROCKWALL HIGHGATE, LTD.,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
	§	439th JUDICIAL DISTRICT
INDEMNITY INSURANCE COMPANY	§	
OF NORTH AMERICA A/K/A CHUBB	§	
AGRIBUSINESS,	§	
	§	
Defendant.	§	ROCKWALL COUNTY, TEXAS

COMES NOW, Indemnity Insurance Company of North America a/k/a Chubb Agribusiness (“Chubb”), Defendant in the above entitled and numbered cause, and file this its Original Answer, and for such would respectfully show the Court as follows:

Chubb denies all and singular the allegations contained in Plaintiff's Original Petition, and demands strict proof thereof.

1. Plaintiff's claims are barred, limited, and/or controlled by one or more of the following provisions of Chubb Policy No. FO-208027 issued to Rockwall Highgate, Ltd. with a Policy Period from 12/01/2016 to 12/01/2017:

FORM FP 00 12 09 13:

SECTION I . COVERAGES

COVERAGE A . DWELLINGS

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the "insured location" described in the Declarations, or elsewhere as expressly provided below, caused by or resulting from any Covered Cause of Loss.

1. Covered Property

The following are Covered Property under Coverage **A** of this Coverage Form:

a. Each "dwelling" owned by you and for which a Limit of Insurance is shown in the Declarations. The "dwelling" may be located on or away from the "insured location"

LOSS CONDITION - VALUATION

1. Property

a. The basis for loss settlement will be determined by the ratio of the Limit of Insurance applying to the destroyed or damaged Covered Property to its full replacement cost. When determining the full replacement cost, the values of the following will be disregarded:

(1) Excavations, footings;

(2) Foundations; and

(3) Piers and other structures or devices that support all or part of Covered Property and are below the undersurface of the lowest basement floor; or, where there is no basement, those below the surface of the ground inside the foundation walls; also underground flues, pipes, wiring and drains.

d. If your loss qualifies for payment on a replacement cost basis, but the cost of repair or replacement is more than either \$2,500 or 5% of the applicable Limit of Insurance, the only basis on which we will settle pending completion of repairs or replacement is actual cash value, as of time of loss, of the damaged part of the structure. In case of such a loss you can make an initial claim for payment on the actual cash value basis, and later make a supplementary claim for replacement cost payment. If you elect to exercise this option, you must notify us of your intention

within 180 days of the occurrence of the loss. The cost of repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

SECTION III – ADDITIONAL COVERAGES

C. Water Damage

In the event of water (or steam) damage not otherwise excluded, from a plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance, we:

1. Will also pay the necessary cost of tearing out and replacing any part of a covered building or structure so that the damaged system or appliance can be repaired, provided that Special Causes of Loss is shown in the Declarations for Coverages **A** and **B** under which the building or structure is covered; but
2. Will **not** pay the cost to repair any defect which caused water or steam to escape from a system or appliance containing water or steam. In this Additional Coverage, a plumbing system does not include a sump, sump pump or related equipment. This Additional Coverage will not increase the Limit of Insurance provided in this Coverage Part.

SECTION IV . OTHER PROVISIONS

A. Covered Causes Of Loss, Exclusions And Limitations

See the Causes of Loss Form - Farm Property, for Basic, Broad or Special coverage as shown in the Declarations.

B. Limits Of Insurance

See the Farm Property - Other Farm Provisions Form - Additional Coverages, Conditions, Definitions.

C. Deductible

See the Farm Property - Other Farm Provisions Form - Additional Coverages, Conditions, Definitions.

FORM 00 90 09 03:

B. Farm Property Conditions

In addition to the Common Policy Conditions and the Conditions in the individual Coverage Forms, the following apply:

LOSS CONDITIONS

3. Duties In The Event Of Loss Or Damage

- a. In the event of loss or damage to Covered Property, we have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an "insured" seeking coverage, or a representative of either:
 - (1) Notify the police if a law may have been broken.
 - (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
 - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
 - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
 - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
 - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (8) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any "insured" under oath, while not in the presence of any other "insured" and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an "insured's" books and records. In the event of an examination, an "insured's" answers must be signed.

6. Loss Payment

- a. In the event of loss or damage insured against under a Coverage Form to which this Condition applies, at our option we will either:
 - (1) Pay the value of lost or damaged property;
 - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to Paragraph **b.** below;
 - (3) Take all or any part of the property at an agreed or appraised value; or
 - (4) Repair, rebuild, or replace the property with other of like kind and quality, subject to Paragraph **b.** below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in the Coverage Form or any applicable provision that amends or supersedes the Valuation Condition.

11. Unoccupancy And Vacancy

- a. If a building or structure is "vacant" or "unoccupied" beyond a period of 120 consecutive days, the Limits of Insurance applicable to the building or structure and its contents will be automatically reduced by 50%, unless we extend the period of "vacancy" or "unoccupancy" by endorsement made a part of the applicable Coverage Form.
- b. In addition to the penalty described in Paragraph **a.** above, "unoccupancy" or "vacancy" results in certain exclusions or limitations applicable to certain causes of loss. See Causes of Loss Form - Farm Property.

GENERAL CONDITIONS

1. Concealment, Misrepresentation Or Fraud

This insurance is void in any case of fraud by you as it relates to this insurance at any time. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a.** This insurance;
- b.** The Covered Property;
- c.** Your interest in the Covered Property; or
- d.** A claim under this insurance.

11. "Unoccupancy" or "unoccupied" means the condition of:

- a.** A "dwelling" (except while being constructed) not being lived in; or
- b.** Any other building or structure (except while being constructed) not being used; even if it contains furnishings or other property customary to its intended use or occupancy.

12. "Vacancy" or "vacant" means the condition of a building or structure (except while being constructed) not containing sufficient furnishings or other property customary to its intended use or occupancy.

13. "Specified Causes of Loss" means the following: Fire; lightning; explosion; windstorm or hail; smoke, including the emission or puffback of smoke, soot, fumes or vapors from a boiler, furnace or related equipment; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

- c.** Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the "insured location" and contains water or steam.

D. Limits Of Insurance

The most we will pay for loss or damage in any one occurrence is the lesser of the following:

1. The applicable Limit of Insurance shown in the Declarations; or
2. The applicable Special Limit of Insurance described under Section **A** of each applicable Coverage.

E. Deductible

We will not pay for loss, damage or expense in any one occurrence until the amount of loss, damage or expense exceeds the applicable Deductible shown in the Declarations. We will then pay the amount of loss, damage or expense in excess of that Deductible, up to the applicable Limit of Insurance or Special Limit of Insurance.

In the event that you sustain, from the same occurrence, losses or expenses in excess of the applicable Deductibles under two or more Coverages, only the highest applicable Deductible amount will apply.

FORM FP 03 04 01 98:

The **Deductible** Section is replaced by the following:

We will not pay for loss ("loss"), damage or expense in any one occurrence until the amount of loss ("loss"), damage or expense exceeds the applicable Deductible shown in the Declarations. We will then pay the amount of loss ("loss"), damage or expense in excess of that Deductible, up to the applicable Limit of Insurance or Special Limit of Insurance.

FORM FP 10 60 02 09:

A. Covered Causes Of Loss

Covered Causes Of Loss means the causes as described and limited under either Paragraph **B.** or **C.** or **D.** below in accordance with a corresponding entry of either Basic or Broad or Special, respectively, on the Declarations opposite each Coverage or property to which this insurance applies. Covered Causes of Loss are also limited by the Exclusions in Section **E.**

D. Covered Causes Of Loss – Special

Subject to the provisions in Section **A.**, when Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is excluded in the following paragraphs or in Section **E.** Exclusions.

g. Discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective system or from within a household appliance:

(1) That occurs on the "insured location", but is caused by discharge that takes place off the "insured location";

(2) Caused by or resulting from freezing. This provision does not apply if you have used reasonable care to:

(a) Maintain heat in the building or structure; or

(b) Shut off the water supply and drain all systems or appliances of water. However, if the building or structure is protected by an automatic fire protective system, you must use reasonable care to continue the water supply and maintain heat in the building or structure for coverage to apply.

(3) Due to any cause other than freezing and occurring in a building or structure "vacant" for more than 30 consecutive days immediately before the loss;

w. The following causes of loss to any building, structure or personal property:

(1) Wear and tear;

(2) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

(3) Smog;

(4) Settling, cracking, shrinking or expansion;

(5) Nesting or infestation, or discharge or release of waste products or secretions, by birds, vermin, rodents, insects or domestic animals.

(6) Mechanical breakdown, including rupture or bursting caused by centrifugal force;

(7) Dampness or dryness of atmosphere;

(8) Changes in temperature or extremes of heat or cold, including freezing. But this exclusion does not apply to freezing of a plumbing, heating, air conditioning or automatic fire protective system or freezing of a household appliance, if you have used reasonable care to:

(a) Maintain heat in the building or structure; or

(b) Shut off the water supply and drain all systems or appliances of water.

However, if the building or structure is protected by an automatic fire protective system, you must use reasonable care to continue the water supply and maintain heat in the building or structure for coverage to apply;

(9) Marring or scratching. But if an excluded cause of loss that is listed in Paragraphs **w.(1)** through **w.(9)** results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

E. Exclusions

The following Exclusions apply when any or all of the Covered Causes of Loss, Basic, Broad or Special, are specified in the Declarations. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

7. Neglect

Neglect, meaning neglect of the "insured" to use all reasonable means to save and preserve property at and after the time of a loss.

2. Plaintiffs' recovery, if any, must be limited by the policy limit and deductible provisions provided in the Chubb Policy.

3. Plaintiffs' recovery, if any, is limited and barred by the doctrine of concurrent causation.

4. Chubb reserves all of its rights under the policy, and reserves the right to assert additional defenses that may be discovered during the course of discovery.

WHEREFORE, PREMISES CONSIDERED, Chubb prays that Plaintiff take nothing by this suit, and that Chubb go hence and recover costs in its behalf expended.

Respectfully submitted,

/s/ James H. Moody, III
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this instrument has been furnished to Plaintiff's counsel in accordance with the Texas Rules of Civil Procedure, this 28th day of January 2019.

Via E-mail: scott@scottortizlaw.com

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